

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,)	
)	
)	Case No.: 4:11-CV-00504-JAJ-TJS
)	
Plaintiff,)	
)	
)	DEFENDANTS' MOTION TO
v.)	DISMISS OR STAY
)	LITIGATION
PELLA CORPORATION AND PELLA)	
WINDOWS AND DOORS, INC.,)	
)	
Defendants.)	
)	
)	

Defendants Pella Corporation and Pella Windows and Doors, Inc. (collectively “Pella”) hereby move to dismiss or stay this action in favor of a more comprehensive action pending in the Superior Court of the State of Delaware, New Castle County against all fourteen of Pella’s general liability insurers that provided coverage during the period 1991 – 2006. In support of this Motion, Pella relies on its Memorandum of Law in Support of this Motion and accompanying Declaration of Keith McKenna, and states:

1. This declaratory judgment action is one of three pending lawsuits that seek to adjudicate the responsibilities of Pella’s insurers with respect to coverage for the lawsuit captioned *Dr. Leonard E. Saltzman, et al. v. Pella Corporation, et al.*, Case No. 06 C 4481, United States District Court for the Northern District of Illinois, Eastern Division (the “Saltzman Lawsuit”), in which Pella has been named as a defendant by claimants seeking damages arising out of certain aluminum clad windows manufactured and/or sold by Pella.

2. The other two lawsuits include another declaratory judgment lawsuit initiated by Hartford Casualty Insurance Company and Hartford Fire Insurance Company (collectively, “Hartford”) against Pella before this Court, and a lawsuit filed by Pella in state court in Delaware seeking a comprehensive adjudication of the coverage obligations of all fourteen insurers potentially covering Pella for the Saltzman Lawsuit, including the coverage obligations of the plaintiff in this action, St. Paul Fire and Marine Insurance Company (“St. Paul”), and Hartford. Several of the defendant insurers in the Delaware action lack diversity with Pella, such that the Delaware action may not be removed to federal court.

3. Both this action and the Delaware action involve the same issues, as both seek to resolve St. Paul’s defense and indemnity obligations with respect to the Saltzman Lawsuit. The issues to be resolved in both the Delaware action and this action involve the application of state insurance law, and do not involve any federal questions.

4. Under established United States Supreme Court precedent in *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942) and *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), this Court should abstain from exercising jurisdiction over this declaratory judgment action because the Delaware action is more comprehensive than this action and presents St. Paul the same opportunity for adjudication of the same issues.

WHEREFORE, Pella respectfully requests that this Court exercise its discretion to abstain from exercising jurisdiction over this declaratory judgment action, and dismiss or stay this lawsuit in favor of the pending Delaware action.

Dated: December 20, 2011.

Respectfully submitted,

BELIN McCORMICK, P.C.

By /s/ Richard W. Lozier, Jr.

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*Attorneys for Defendants Pella Corporation and
Pella Windows and Doors, Inc.*

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was
served upon the parties to this action by serving a copy upon each
of the attorneys listed below on December 20, 2011, by

- | | |
|---|--|
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Electronic Mail |
| <input type="checkbox"/> FedEx/ Overnight Carrier | <input checked="" type="checkbox"/> CM / ECF |

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Signature: /s/ L. A. Brustkern

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